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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 APPLE INC.,

11 Plaintiff,

12 vs.

13 WI-LAN, INC.,

14 Defendant.

15 AND ALL RELATED
16 COUNTERCLAIMS.

CASE NO. 14cv2235 DMS (BLM)

ORDER CONSTRUING CLAIMS

17 This matter came before the Court for a claim construction hearing on October
18 30, 2017. John Allcock and Sean Cunningham appeared and argued on behalf of Apple
19 and Allison Goddard, Kevin Schubert, Robert Cote and Seth Hasenour appeared and
20 argued on behalf of Wi-LAN. After the matter was submitted, Apple filed a Notice of
21 Supplemental Evidence Regarding Claim Construction, to which Wi-LAN filed a
22 response. After a thorough review of the parties' claim construction briefs and all other
23 material submitted in connection with the hearing, the Court issues the following order
24 construing the disputed terms of the patents at issue in this case.

25 **I.**

26 **BACKGROUND**

27 This case is related to another case, involving the same parties, which was
28 previously adjudicated by this Court, *Wi-LAN v. Apple*, Case Number 13cv0798. That

1 case involved two Wi-LAN Patents, United States Patents Numbers 8,311,040 (“the
2 ‘040 Patent”) and 8,315,640 (“the ‘640 Patent”). The Court construed the claims of the
3 ‘040 Patent and the ‘640 Patent and then granted summary judgment of
4 noninfringement to Apple. After that ruling, the parties stipulated to entry of final
5 judgment so that Wi-LAN could appeal. On appeal, Wi-LAN challenged this Court’s
6 claim construction ruling, specifically the Court’s constructions of the term “specified
7 connection” in the ‘040 Patent and the term “UL connections” in the ‘640 Patent. The
8 Federal Circuit affirmed the Court’s constructions and the grant of summary judgment
9 of noninfringement to Apple.

10 After the Court’s claim construction ruling but before Apple filed its motion for
11 summary judgment in the prior case, Apple filed the present case against Wi-LAN in
12 the United States District Court for the Northern District of California alleging
13 declaratory judgment claims for noninfringement and invalidity of five other Wi-LAN
14 Patents, United States Patents Numbers 8,462,723 (“the ‘723 Patent”), 8,615,020 (“the
15 ‘020 Patent”), 8,457,145 (“the ‘145 Patent”), 8,462,761 (“the ‘761 Patent”) and
16 8,537,757 (“the ‘757 Patent”). Apple later filed an amended complaint adding the ‘040
17 Patent to the case. Shortly before this Court issued its summary judgment ruling in the
18 prior case, the Northern District of California transferred this case to this Court. After
19 Wi-LAN filed its appeal, Apple moved to stay this case pending that appeal, which the
20 Court granted. After the appeal was decided, the stay was lifted and this case was put
21 back on the Court’s calendar.

22 Pursuant to Patent Local Rule 4.2.a, the parties have identified eight terms or
23 groups of terms for construction in this case:

24 (1) “wireless subscriber unit”/ “subscriber unit”/ “subscriber station,” which
25 terms appear in the ‘145 Patent, ‘723 Patent, ‘020 Patent, ‘761 Patent and ‘757
26 Patent;

27 (2) “connections”/ “uplink connections”/ “a plurality of connections served by
28 the subscriber unit/connections established at a [or the] subscriber unit [or

subscriber station],” which terms appear in the ‘145 Patent, ‘723 Patent, ‘020 Patent, ‘761 Patent and ‘757 Patent;

(3) “queue,” which term appears in the ‘145 Patent, the ‘723 Patent, the ‘761 Patent and the ‘020 Patent;

(4) “packing sub-header,” which term appears in the ‘040 Patent;

(5) “frame map”/ “sub-frame map,” which terms appears in the ‘723 Patent, ‘020 Patent and the ‘757 Patent;

(6) “poll-me bit”/ “poll-me message,” which terms appear in the ‘020 Patent;

(7) “fairness algorithm,” which appears in the ‘145 Patent; and

(8) whether the preamble in Claim 26 of the ‘145 Patent is limiting.¹

II. DISCUSSION

The first four terms and groups of terms were at issue, or are similar to terms that were at issue, in the prior case. For that reason, Wi-LAN argues relitigation of these terms is barred by the doctrine of issue preclusion. The Court addresses that argument first, then turns to the construction of the claim terms and groups of terms.

A. Issue Preclusion

The term “issue preclusion” encompasses the doctrine once known as “collateral estoppel.” *Taylor v. Sturgell*, 553 U.S. 880, 892 n.5 (2008). “Issue preclusion ... bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment” *Id.* at 893 (internal quotation marks and citations omitted).

Issue preclusion, of course, is not unique to patent cases. *Aspex Eyewear, Inc. v. Zenni Optical Inc.*, 713 F.3d 1377, 1380 (Fed. Cir. 2013). Accordingly, the Federal Circuit is “guided by the precedent of the regional circuit. However, for any aspects

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¹ The parties initially requested that the Court also construe the term “QoS,” but they have since agreed on the construction of that term.

1 that may have special or unique application to patent cases, Federal Circuit precedent
2 is applicable.” *Id.*

3 In the Ninth Circuit, issue preclusion applies when:

4 (1) the issue necessarily decided at the previous proceeding is identical to
5 the one which is sought to be relitigated; (2) the first proceeding ended
6 with a final judgment on the merits; and (3) the party against whom issue
preclusion is asserted was a party or in privity with a party at the first
proceeding.

7 *Paulo v. Holder*, 669 F.3d 911, 917 (9th Cir. 2011) (internal quotation marks, citation
8 and brackets omitted). The party asserting issue preclusion bears the burden of showing
9 these elements are met. *Offshore Sportswear v. Vuarnet Int’l, B.V.*, 114 F.3d 848, 850
10 (9th Cir. 1997).

11 Wi-LAN has not met that burden here. First, for the first two terms, Wi-LAN has
12 not shown the terms at issue here are identical to the terms at issue in the prior case. In
13 the prior case, the Court construed the terms “wireless subscriber radio unit,” “wireless
14 communication radio unit” and “UL connections.” The terms at issue here are similar,
15 “subscriber unit,” “wireless subscriber unit,” “subscriber station,” “connections,”
16 “uplink connections,” “a plurality of connections served by the subscriber unit” and
17 “connections established at a subscriber unit,” but they are not identical to the terms
18 construed in the prior case. Thus, issue preclusion does not apply to the first two
19 groups of terms.

20 The term “queue” is identical to a term that was at issue in the prior case, but Wi-
21 LAN has not shown the parties actually litigated that term. Rather, the parties stipulated
22 to the construction of that term in the prior case. Thus, Wi-LAN has not shown this
23 term is subject to issue preclusion.

24 The final term, “packing sub-header,” was at issue in the prior case and was
25 actually litigated. However, Wi-LAN has not shown that term was “necessarily
26 decided” in the prior case. Indeed, the term played no part in the Court’s summary
27 judgment ruling, judgment thereon and subsequent appeal. Accordingly, “packing sub-
28 header” is not subject to issue preclusion either.

1 For these reasons, the Court declines to apply issue preclusion to the above terms.

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3 **B. Claim Construction**

4 Claim construction is an issue of law, *Markman v. Westview Instruments, Inc.*,
5 517 U.S. 370, 372 (1996), and it begins “with the words of the claim.” *Nystrom v.*
6 *TREX Co., Inc.*, 424 F.3d 1136, 1142 (Fed. Cir. 2005) (citing *Vitronics Corp. v.*
7 *Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Generally, those words are
8 “given their ordinary and customary meaning.” *Id.* (citing *Vitronics*, 90 F.3d at 1582).
9 This ““is the meaning that the term would have to a person of ordinary skill in the art
10 in question at the time of the invention.”” *Id.* (quoting *Phillips v. AWH Corp.*, 415 F.3d
11 1303, 1313 (Fed. Cir. 2005)). “The person of ordinary skill in the art views the claim
12 term in the light of the entire intrinsic record.” *Id.* Accordingly, the Court must read
13 the claims ““in view of the specification, of which they are a part.”” *Id.* (quoting
14 *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995)). In
15 addition, ““the prosecution history can often inform the meaning of the claim language
16 by demonstrating how the inventor understood the invention and whether the inventor
17 limited the invention in the course of prosecution, making the claim scope narrower
18 than it would otherwise be.”” *Id.* (quoting *Phillips*, 415 F.3d at 1318).

19 1. “Subscriber” Terms

20 The first group of terms at issue here are the “subscriber” terms, “wireless
21 subscriber unit,” “subscriber unit” and “subscriber station,” which terms appear in the
22 ‘145 Patent, ‘723 Patent, ‘020 Patent, ‘761 Patent and ‘757 Patent. In each of the
23 Patents, the “subscriber” terms are described as part of a method or system of
24 allocating, requesting or obtaining bandwidth from a base station. The parties agree
25 these terms should be construed consistently across the Patents. Apple proposes they
26 be construed as “fixed or portable customer premises equipment that wirelessly receives
27 UL bandwidth from a base station, and allocates the bandwidth across connected user
28 devices.” Wi-LAN proposes that the terms be construed as a “module that receives UL

1 bandwidth from a base station, and allocates the bandwidth across its user connections.”
2 As is evident from the parties’ proposals, they agree the subscriber units receive UL
3 bandwidth from a base station and allocate that bandwidth elsewhere. The disputes are
4 two-fold: (1) Whether the subscriber unit/station should be construed as “fixed or
5 portable customer premises equipment” or as a “module,” and (2) whether the
6 bandwidth is allocated to “connected user devices” or “user connections.”

7 a. CPE or Module

8 In the prior case, there was a similar issue with respect to the terms “wireless
9 subscriber radio unit” and “wireless communication radio unit,” with Apple arguing that
10 these units were equivalent to customer premises equipment or CPEs and Wi-LAN
11 arguing to the contrary. The Court agreed with Wi-LAN and refused to limit these units
12 to CPEs. Wi-LAN argues the Court should adopt that approach here, and for the
13 following reasons, the Court agrees.

14 First, Wi-LAN did not use the term “CPE” in the patent claims at issue here.
15 Rather, the claims recite “subscriber units” or “subscriber stations.” As Apple pointed
16 out in its responsive brief, Wi-LAN used the term “CPE” in the claims of two of its
17 prior patents. (*See* Decl. of Peter Maggiore in Supp. of Apple’s Responsive Br., Ex. 1
18 at 21; Ex. 2 at 51.²) Its decision not to use that term here counsels against construing
19 the “subscriber” terms as CPEs.

20 Second, although the specifications are rife with the term “CPE,” the patent
21 claims “will not be confined to that example ‘unless the patentee has demonstrated a
22 clear intention to limit the claim scope using words or expression of manifest exclusion
23 or restriction.’” *Aria Diagnostics, Inc. v. Sequenom, Inc.*, 726 F.3d 1296, 1302 (Fed.
24 Cir. 2013) (quoting *Liebel Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir.
25 2004)). There is no evidence of that intent here. To the contrary, and as stated above,

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28 ² The page numbers cited reflect the numbers assigned by the parties.

1 the claims recite “subscriber units” and “subscriber stations,” as does the specification.
2 (*See* ‘723 Patent at 1:28-60.)³

3 Third, the prosecution history of the ‘723 Patent reveals the Examiner treated the
4 “subscriber” terms at issue here as interchangeable with the “subscriber” terms at issue
5 in the prior case. (*See* Index of Exs. in Supp. of Wi-LAN’s Opening Br., Ex. G at 51.)
6 There, the Court declined to limit the subscriber terms to CPEs, and for the reasons set
7 out there and above, the Court declines to do so here.

8 b. User Devices or User Connections

9 Turning to the second issue, Apple also fails to cite any evidence to support its
10 proposed construction of the terms to require the allocation of bandwidth across
11 “connected user devices.” The claims themselves do not use this language, but instead
12 use the term “connections,” (‘761 Patent at 38:35-37; ‘020 Patent at 38:40-44; ‘723
13 Patent at 23:11-13; ‘145 Patent at 32:57-59; ‘757 Patent at 4:33-41), which is
14 consistent with Wi-LAN’s proposal.

15 For these reasons, the Court adopts Wi-LAN’s proposed construction for the
16 “subscriber” terms.

17 2. “Connections” Terms

18 The next group of terms is the “connections” terms, which are “connections,”
19 “uplink connections,” “a plurality of connections served by the subscriber unit” and
20 “connections established at a [or the] subscriber unit [or subscriber station],” which
21 terms appear in the ‘145 Patent, ‘723 Patent, ‘020 Patent, ‘761 Patent and ‘757 Patent.
22 As with the “subscriber” terms, the parties agree the “connections” terms should be

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25 ³ Inherent in Apple’s understanding of a “CPE” is that it is fixed or portable, but
26 not mobile. The specification does not limit “subscriber units” or “subscriber stations”
27 in that way, however. (*See id.* at 1:28-38) (“Exemplary communication systems include
28 mobile cellular telephone systems, personal communication systems (PCS), and
cordless telephones.”) Furthermore, the Examiner of the ‘020 Patent read the invention
claimed therein on prior art that included a “cellular telephone network.” (*See* Index
of Exs. in Supp. of Wi-LAN’s Opening Br., Ex. I at 75, Ex. J at 92.) Thus, this
evidence also refutes Apple’s proposal to construe the “subscriber terms” as CPEs.

1 construed consistently across the Patents. Apple proposes the terms be construed as
2 “wired or wireless connections between the subscriber station and its connected user
3 devices,” while Wi-LAN proposes the terms be construed as “connections between the
4 subscriber unit and its users.”

5 Although the common term here is “connections,” the real dispute centers on the
6 meaning of “users.” Consistent with its argument on the “subscriber” terms, Apple
7 argues “users” must be separate user devices, while Wi-LAN urges a broader meaning.
8 This dispute is similar to one raised in the prior case, namely whether the “connections”
9 identified in the Patents can be included in one device or must be in different devices.
10 In the prior case, the Court found the “connections” did not have to be in different
11 devices, *i.e.*, that there could be multiple “connections” in one device. Apple attempts
12 to move the Court away from its prior construction, but the intrinsic evidence it cites
13 is not persuasive.⁴

14 Based on the specification, the Court agrees with Wi-LAN’s proposed
15 construction of the “connection” terms. Although the specification describes “users”
16 to “include both residential and business customers,” (‘723 Patent at 2:10-12), it also
17 recites “user applications.” (*Id.* at 6:63-67.) The specification also goes on to describe
18 different types of “connections,” *e.g.*, VBR connections and DAMA connections, (*id.*
19 at 20:6-8), which suggests the “users” are not confined to “user devices.” For these
20 reasons, the Court adopts Wi-LAN’s proposed construction of the “connections” terms.

21 3. “Queue”

22 The next term is “queue,” which appears in the ‘145 Patent, the ‘723 Patent, the
23 ‘761 Patent and the ‘020 Patent. Apple proposes the Court construe the term as

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26 ⁴ Apple’s reliance on the Federal Circuit’s opinion in the prior case as support
27 for its proposed construction of the “connections” terms, which reliance was first
28 disclosed at the *Markman* hearing, is also unpersuasive. The issue here, whether the
“connections” are between the subscriber station and “users” or “user devices,” was not
before the Federal Circuit. Thus, any reference to “user devices” in that opinion is
neither helpful nor determinative of the issue here.

1 “buffer(s), each associated with a unique QoS, containing data to be transmitted.”⁵ Wi-
2 LAN proposes the term be construed as “structure(s) containing data to be transmitted.”

3 The term “queue” was at issue in the prior case, and the parties agreed it should
4 be construed as “structure(s) containing data to be transmitted.” Apple argues for a
5 different construction in this case, but the intrinsic evidence it relies on does not support
6 its proposed construction. On the contrary, the intrinsic evidence supports Wi-LAN’s
7 proposed construction. For instance, Claim 1 of the ‘723 Patent describes a “queue,”
8 and then modifies it with the phrase “based on the quality of service (QoS) of the data.”
9 (*Id.* at 23:11-13.) Apple’s proposed construction would make that modifier redundant.
10 Thus, the Court adopts Wi-LAN’s proposed construction of “queue.”

11 4. “Packing Sub-Header”

12 The next term is “packing sub-header,” which appears in the ‘040 Patent. Apple
13 proposes the Court construe this term as “a header located in a PDU payload.” Wi-
14 LAN proposes the term be construed as it was in the prior case as “a header located in
15 a PDU.”

16 Although issue preclusion does not bar relitigation of the construction of this
17 term, the Court is not persuaded that its prior construction is incorrect. The Court
18 thoroughly considered this issue in the prior case, and stands on that construction for
19 the reasons set out there and because Apple presents no new evidence to warrant a
20 departure from the prior construction. Thus, the Court adopts Wi-LAN’s proposed
21 construction of this term.

22 5. “Frame Map/Sub-Frame Map”

23 The next two terms are “frame map” and “sub-frame map,” which appear in the
24 ‘723 Patent, the ‘020 Patent and the ‘757 Patent. Apple proposes these terms be
25 construed as “a single data structure that allocates physical slots for bandwidth grants
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27 ⁵ On the Friday before the *Markman* hearing, the parties submitted an Amended
28 Joint Claim Construction Statement, Chart and Worksheet. In that pleading, the parties
informed the Court they had agreed on the construction of “QoS,” and Apple amended
its proposed constructions of three terms: “queue,” frame/sub-frame map and poll-me
bit/message. The proposals cited here are the amended proposals.

1 to individual subscriber stations, and that contain all UL or DL bandwidth grants for an
2 entire [frame/sub-frame].” Wi-LAN proposes the terms be construed as “control
3 information indicating the bandwidth allocated to a subscriber unit(s) in the uplink or
4 downlink communications link within a frame.”

5 The specification supports both sides’ proposals, namely that the frame/sub-
6 frame maps may both allocate bandwidth (Apple) and indicate bandwidth allocations
7 (Wi-LAN). (*Compare* ‘723 Patent at 4:12-23, 9:27-29, 10:4-6, 12:9-13, 21-24, 15:7-9,
8 13-15, 30-41, 16:56-59, 17:14-15, 63-18:2, 19:23-29, 22:37-38 (stating frame/sub-
9 frame maps allocate bandwidth) *with* 13:58-60, 14:25-27 (stating frame/sub-frame maps
10 “communicate” and “indicate” bandwidth allocations.) However, neither side’s
11 proposal allows for both of those possibilities. Because each side places a limitation
12 on the terms that is not supported by the specification, the Court declines to adopt either
13 proposal. Rather, the Court finds each proposal includes some concepts that should be
14 included in the proper construction of the terms. Thus, the Court construes frame/sub-
15 frame maps as “data structures that may allocate bandwidth to subscriber station(s) and
16 indicate the bandwidth allocated to subscriber unit(s) within a particular frame/sub-
17 frame.”

18 6. “Poll-Me Bit/Poll-Me Message”

19 The next two terms are “poll-me bit” and “poll-me message,” which terms are
20 found in the ‘020 Patent. Apple proposes these terms be construed as “[a bit/bits] in a
21 MAC packet utilized to indicate to the base station that the subscriber station requires
22 a change in UL bandwidth allocation.” Wi-LAN proposes the terms be construed as “a
23 bit sent by a currently active subscriber unit, that currently has bandwidth allocations,
24 indicating a request to be provided an allocation of UL bandwidth in which to transmit
25 a bandwidth request.”

26 Of these two proposals, Wi-LAN’s is more consistent with the specification. The
27 specification confirms that “poll-me bits” and “poll-me messages” must come from
28 “currently active” users, and “currently active” users are users that already have

1 bandwidth allocations. (See '020 Patent at 11:15-26, 11:45-29, 13:7-14, 19:45-48,
2 37:41-44.) The specification also makes clear that the purpose of the “poll-me bits” and
3 “poll-me messages” is to request bandwidth from the base station.

4 Apple’s proposed construction includes a limitation that is not supported by the
5 specification, namely that the bit be utilized in a MAC packet. Apple’s proposed
6 construction also states the purpose of the “poll-me bits” and “poll-me messages” is to
7 “indicate to the base station that the subscriber station requires a change in bandwidth
8 allocation,” which is not exactly accurate. The purpose of these bits and messages is
9 to request bandwidth from the base station, not to indicate a change in bandwidth
10 allocation. Wi-LAN’s terminology is more consistent with the specification, and thus
11 the Court adopts Wi-LAN’s proposed construction of these terms.

12 7. “Fairness Algorithm”

13 The last true term at issue is “fairness algorithm,” which appears in the ‘145
14 Patent. Apple proposes this term be construed as “a QoS algorithm to prioritize the
15 transmission of user data of one connection over that of at least one other connection.”
16 Wi-LAN proposes the term be construed as a “QoS algorithm to ensure fair handling
17 of the queued data.”

18 Between these two proposals, Wi-LAN’s is more consistent with the
19 specification. As stated therein, the purpose of the “fairness algorithm” is “to ensure
20 fair handling of the data queued at” a QoS when “there is insufficient bandwidth to
21 transmit all queued data during the current TDD frame.” (‘145 Patent at 22:65-23:3,
22 57-67.) Apple’s proposed construction reads the “fairness” requirement out of the
23 algorithm and replaces it with prioritization, but simple prioritization does not ensure
24 fairness. Indeed, the process of prioritization, untethered to the concept of fairness,
25 could result in one connection always receiving bandwidth while others go without.
26 This is precisely the situation sought to be avoided by the use of “fairness algorithms,”
27 and thus, prioritization is not an accurate descriptor.

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1 Furthermore, the specification provides an example of a fairness algorithm that
2 does not involve any prioritization. (*See id.* at 23:3-12.) In that algorithm, Continuous
3 Grant, “[a]ll data in the[] queues must be sent every TDD frame.” (*Id.* at 10-11.)

4 The claims and the specification both read in terms of “fairness,” not
5 prioritization. Because’s Wi-LAN’s proposal is the only one that reflects that concept,
6 the Court adopts Wi-LAN’s proposed construction of this term.

7 8. Preamble

8 The final issue for the Court to decide is whether the preamble of Claim 26 of the
9 ‘145 Patent is limiting. Apple asserts it is while Wi-LAN states it is not.

10 “Whether to treat a preamble as a limitation is a determination resolved only on
11 review of the entire[] . . . patent to gain an understanding of what the inventors actually
12 invented and intended to encompass by the claim.” *Poly-Am., L.P. v. GSE Lining*
13 *Tech., Inc.*, 383 F.3d 1303, 1309 (Fed. Cir. 2004) (quoting *Corning Glass Works v.*
14 *Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989)). There is no litmus
15 test for determining when a preamble limits the invention. *Id.*; *Catalina Mktg. Int’l,*
16 *Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002). There are, however,
17 some guidelines.

18 “Generally, the preamble does not limit the claims.” *Georgetown Rail Equip.*
19 *Co. v. Holland L.P.*, 867 F.3d 1229, 1236 (Fed. Cir. 2017) (quoting *Allen Eng’g Corp.*
20 *v. Bartell Indus., Inc.*, 299 F.3d 1336, 1346 (Fed. Cir. 2002)).

21 However, a preamble may be limiting if: “it recites essential structure or
22 steps”; claims “depend[] on a particular disputed preamble phrase for
23 antecedent basis”; the preamble “is essential to understand limitations or
24 terms in the claim body”; the preamble “recit[es] additional structure or
steps underscored as important by the specification”; or there was “clear
reliance on the preamble during prosecution to distinguish the claimed
invention from the prior art.”

25 *Id.* (quoting *Catalina Mktg.*, 289 F.3d at 808). In contrast, the preamble does not limit
26 the claims when the “patentee defines a structurally complete invention in the claim
27 body and uses the preamble only to state a purpose or intended use for the invention.”
28 *Poly-Am.*, 383 F.3d at 1310 (quoting *Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir.

1 1997)). “[P]reamble language merely extolling benefits or features of the claimed
2 invention does not limit the claim scope without clear reliance on those benefits or
3 features as patentably significant.” *Georgetown Rail*, 867 F.3d at 1236 (quoting
4 *Catalina Mktg.*, 289 F.3d at 809).

5 Here, Claim 26 of the ‘145 Patent recites:

6 *A subscriber unit for a wireless communication system, comprising:*

7 a plurality of queues for buffering user traffic according to a traffic
8 parameter, each queue having an associated logical state;

9 a media access control (MAC) element capable of

10 transmitting an uplink (UL) bandwidth request based on the
11 logical state of the queues during a bandwidth request
12 opportunity, and

13 allocating between the queues a bandwidth allocation
14 received in response to the UL bandwidth request, based on
15 the current state of the queues.

14 Apple asserts the preamble is limiting because the body of the claim does not recite a
15 structurally complete invention. Wi-LAN relies on the general rule that preambles are
16 not limiting, and argues the preamble “merely names” the limitations set out in the body
17 of the claim and sets out the intended use of the invention.

18 The Court agrees with Apple that the preamble is limiting for several reasons.
19 First, the body of the claim does not recite a complete structure without the preamble.
20 It is clear from the Patent as a whole that a subscriber unit is a critical part of the
21 invention, and without that limitation, the body of the claim has no context. Second,
22 the preamble does not “merely name” the limitations set out in the body of the claim.
23 Rather, as stated above, it provides context for the limitations, or an “essential
24 structure” for those elements. And finally, the preamble does not recite an intended use
25 for the invention. It is a part of the invention, not just a use therefor. Thus, for these
26 reasons, the Court finds the preamble of Claim 26 of the ‘145 Patent is limiting.

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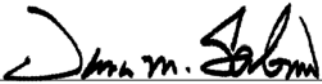
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III.
CONCLUSION

For the reasons stated above, the disputed terms are interpreted as set forth in this Order.

IT IS SO ORDERED.

DATED: November 13, 2017



HON. DANA M. SABRAW
United States District Judge